

[Tax—Assessor—New Construction—Opinion]

Opinion No. 98-003

Mr. Kevin Ross
Maricopa County Assessor
301 West Jefferson, 3rd Floor
Phoenix, Arizona 85003

February 10, 1998

SYLLABUS:

There is no statutory mechanism which permits a county assessor to add to the 1998 tax roll, new construction or value additions which occurred between October 1, 1997 and December 31, 1997, inclusive.

Dear Mr. Ross:

You have asked the following questions:

- 1) Can a county assessor place on the 1998 tax roll newly completed residential property and commercial added value (*i.e.*, “new construction”) that occurred after September 30, 1997, and on or before December 31, 1997?
- 2) Can A.R.S. § 42-179 or any other statutory mechanism be used to add new construction to the 1998 tax roll, when such new construction occurred after September 30, 1997, and on or before December 31, 1997?

Background

The Legislature initiated a new property tax valuation and appeal system applicable to tax years 1997 and beyond. Laws 1994 (2nd Reg. Sess.) ch. 323, § 49 as amended by Laws 1995 (1st Reg. Sess.) ch. 249, § 36. The post-1996 valuation and appeal system consists of a two-year cycle. The first year is the valuation year which is followed by the tax year. A.R.S. § 42-201(15).

As a result of the new statutory scheme, property taxes for a given tax year are calculated on the valuation of the property as of January 1 of the valuation year. See A.R.S. § 42-201(14). Therefore, property taxes for 1998 will be calculated on the valuation of property as of January 1, 1997. Taxes become a lien on the property as of January 1 of the tax year. See A.R.S. § 42-312(B). This means that as of January 1, 1998, the property becomes obligated to pay the taxes which are assessed for the 1998 tax year.

The assessor mails to each taxpayer the notice of valuation on the property before

Mr. Kevin Ross
Maricopa County Assessor
February 10, 1998
Page 2

March 1 of the valuation year. See A.R.S. § 42-221(D). Accordingly, notices of valuation for tax year 1998 were required to be mailed before March 1, 1997. A dissatisfied property owner has sixty days after the notice of valuation is mailed to petition the assessor for a valuation or classification change, or alternatively, to file an action in court pursuant to A.R.S. § 42-177 on or before December 15 of the valuation year (*i.e.*, December 15, 1997, for the 1998 tax year). See A.R.S. §§ 42-221(E), 42-246(A).¹

If the assessor identifies new construction, value additions, deletions or other changes to property which were not reflected on the notice of valuation mailed to the taxpayer by March 1 of the valuation year, the assessor may use the procedures specified in A.R.S. § 42-221.01 to place these changes on the tax roll for the tax year. Therefore, if the property has a change in value (*i.e.*, new construction, value additions or deletions) for the 1998 tax year which occurred between October 1, 1996 and September 30, 1997,

¹If the property owner chooses to file a petition with the assessor pursuant to A.R.S. § 42-221(E), the assessor must rule on that petition by August 15 of the valuation year. A.R.S. § 42-221(I), (*i.e.*, August 15, 1997 for the 1998 tax year). A dissatisfied property owner has twenty-five days after the assessor mails his ruling to appeal to the county board of equalization, if one exists in the county, or otherwise to the state board of equalization. A.R.S. § 42-221(J). Alternatively, a property owner may file an action in tax court within sixty days after the mailing of the assessor's ruling. A.R.S. § 42-246(B).

Both the state and county boards must rule on all appeals by October 15 of the valuation year. A.R.S. §§ 42-172.02(F) and 42-241(D) (*i.e.*, October 15, 1997 for the 1998 tax year). A property owner dissatisfied with a county board's decision may appeal to court within sixty days of the mailing of the county board's decision. A.R.S. §§ 42-245(A), 42-246(B). Similarly, a property owner dissatisfied with the state board's decision may bring an action in tax court within sixty days after the board's decision. A.R.S. § 42-176(B).

Mr. Kevin Ross
Maricopa County Assessor
February 10, 1998
Page 3

which was not reflected on the 1998 notice of value which was mailed by March 1997, the assessor may use A.R.S. § 42-221.01(A) to notify the owner of these changes on or before September 30, 1997.²

Analysis

Your two questions can be consolidated into one for the purpose of this opinion. Your question is whether there is a statutory mechanism which would permit new construction which occurred between October 1, 1997 and December 31, 1997, inclusive, to be placed on the 1998 tax roll. The answer is *no*. There are two provisions in Title 42 which might result in such an addition to the tax roll: A.R.S. §§ 42-221.01 and 42-179. However, close scrutiny of these statutes indicates that neither of them is effective for the time period of October 1, 1997 to December 31, 1997, inclusive, as indicated below.

A.R.S. § 42-221.01 is a statutory mechanism which enables an assessor to place new construction and other changes to property on the tax roll which occur within a defined period, which are not reflected in the notice of valuation mailed to the taxpayer for that particular tax year, and which affects the valuation of property for that tax year. A.R.S. § 42-221.01 provides in pertinent part:

A. For property that is valued by the assessor, in the case of new construction, additions to, deletions from or splits or consolidations of assessment parcels and changes in property use *that occur after September 30 of the preceding year and before October 1 of the valuation year*:

1. The assessor shall notify the owner of the property of any change in the valuation on or before September 30 of the

²If the assessor sends the property owner a notice of change pursuant to A.R.S. § 42-221.01(A), the taxpayer may file an appeal on that valuation within 25 days after the date of the assessor's notice to the state board of equalization, if the property is located in a county of greater than five hundred thousand persons or to the county board of equalization if the property is located in another county. A.R.S. § 42-221.01(A)(2). An appeal to court relating to changes in assessments must be filed within sixty days after the date of the decision. A.R.S. § 42-221.01(A).

valuation year.

2. Within twenty-five days after the date of the assessor's notice, the property owner may appeal the valuation to the state board of equalization if the property is located in a county with a population of five hundred thousand persons or more or to the county board of equalization if the property is located in any other county.

3. Notwithstanding § 42-175, the state board of equalization and county board of equalization shall complete all hearings and issue all decisions with respect to changes in valuations pursuant to this section on or before November 15 of the valuation year.

4. An appeal to superior court or tax court relating to changes in assessments pursuant to this subsection must be filed within sixty days after the date of the decision.

(Emphasis added.)

Under this statute, the assessor's authority to add value is expressly limited to "new construction, additions to . . . and changes in property use that occur after September 30 of the preceding year and before October 1 of the valuation year." A.R.S. § 42-221.01(A). It does not authorize the addition of value which occurs after October 1 of the valuation year.

For the 1998 tax year, A.R.S. § 42-221.01(A) only allows the assessor to place on the 1998 tax roll, changes in value to property caused by new construction, additions to, deletions from, or changes in property use which occurred between September 30, 1996 and October 1, 1997. The fact that the legislature included a specific time frame in which to add new construction to the tax roll indicates the legislature's specific intent to exclude changes which occur before or after that time frame from the statutory procedure. See *Pima County v. Heinfeld*, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982). (Expression of one or more items of a class in a statute, indicates the legislature's intent to exclude all items of the same class which are not expressed.) Therefore, A.R.S. § 42-221.01(A) cannot be used to add value to the 1998 roll as a result of new construction and/or changes in use which occur between October 1, 1997 and December 31, 1997, inclusive.

This interpretation is consistent with an advice memorandum dated June 18, 1996,

Mr. Kevin Ross
Maricopa County Assessor
February 10, 1998
Page 5

issued by the Department of Revenue to all county assessors.³ The conclusion reached by the Department in that memorandum was that A.R.S. § 42-221.01 could never be used to add new construction that occurs between September 30 and December 31, inclusive, of any year.⁴

A review of the provisions of A.R.S. § 42-179 reveals that it too, is not an appropriate vehicle to place new construction or value additions which occurred between October 1, 1997 and December 31, 1997, inclusive, on the 1998 roll. A.R.S. § 42-179 is a statutory mechanism available to the assessor and the taxpayer to correct property tax errors. A.R.S. § 42-179(3) enumerates multiple situations which would invoke the error correction mechanism described in A.R.S. § 42-179.01 *et seq.* The portion of the statute which most closely resembles the current scenario is A.R.S. § 42-179(3)(e)(iii) which

³Pursuant to A.R.S. § 42-141(A)(1), the Department of Revenue exercises general supervision over county assessors in the administration of property tax laws for the purpose of ensuring that all property is uniformly valued for property tax purposes. In this function, the department often provides various types of assistance to county assessors, including written advice such as the aforementioned memorandum.

⁴The specific time period addressed in the Department of Revenue memorandum was new construction which was completed between September 30, 1995, and December 31, 1995. Mr. Partridge concluded that A.R.S. § 42-221.01(A) could not be used to add new construction completed during this time frame to the 1996 tax roll. It is also important to note that when the memorandum was written, the language of A.R.S. § 42-221.01(A) only applied to additions occurring between January 1 and September 30 of the valuation year. A.R.S. § 42-221.01(A) has since been amended by Laws 1997 (1st Reg. Sess.) ch. 274, § 26. The amendment changed the time period for which changes in property occur in which to invoke the notice provisions to "changes which occur after September 30 of the preceding year and before October 1 of the valuation year." Although the statute has changed, the memorandum advice is still valid because the period in question from September 30 through December 31 of the valuation year is still not covered by the explicit language of either version of A.R.S. § 42-221.01(A).

Mr. Kevin Ross
Maricopa County Assessor
February 10, 1998
Page 6

provides:

(e) Subject to the requirements of § 42-179.04, subsection B, a valuation that is based on an error that is exclusively factual in nature or due to a specific legal restriction that affects the subject property and that is objectively verifiable without the exercise of discretion, opinion or judgment and is demonstrated by clear and convincing evidence, such as:

...
(iii) A failure to timely capture on the tax roll a change in value caused by new construction, destruction, demolition or splitting or consolidating interests in real property *existing on the valuation date*.

(Emphasis added.)

This subsection provides that the error must exist on the valuation date which is defined in A.R.S. § 42-201(14) as January 1 of the year preceding the year in which the taxes are levied. Therefore, the "new construction" or added value referred to above would have had to exist on January 1, 1997, in order to use the error correction mechanism to place it on the 1998 tax roll. Since the new construction value you are concerned with occurred between October 1, 1997 and December 31, 1997, inclusive, it did not exist on January 1, 1997; and, therefore, the Notice of Error procedure cannot be used to add this value to the 1998 roll. This same conclusion was reached in an Arizona Department of Revenue memorandum dated June 18, 1996, referred to earlier.⁵

This office has reviewed other provisions in the Arizona Revised Statutes and is not able to identify any statutory mechanism which would permit new construction or value additions which occurred between October 1, 1997 and December 31, 1997, inclusive, to

⁵However, that memorandum related to value additions that occurred after September 30, 1995, and on or before December 31, 1995. The advice contained in that memorandum was that A.R.S. § 42-179 could not be used to add new construction completed during that time frame to the 1996 roll because those changes did not exist on the January 1, 1995 valuation date. Similarly, A.R.S. § 42-179 may not be used to add new construction completed between October 1, 1997 and December 31, 1997 to the 1998 roll.

Mr. Kevin Ross
Maricopa County Assessor
February 10, 1998
Page 7

be placed on the 1998 tax roll.

Conclusion

Neither A.R.S. §§ 42-221.01 nor 42-179 can be used to add new construction or value additions to the 1998 roll when such new construction occurred between October 1, 1997 and December 31, 1997, inclusive.

Very truly yours,

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MARICOPA COUNTY ATTORNEY
DIVISION OF COUNTY COUNSEL

Rachelle Z. Leibsohn
Deputy County Attorney

Approved by the Opinion Review
Committee of the Maricopa County
Attorney's Office this 10th day of
February 1998.

Request No. 98-MCA1